Delegated Administrative Organizations: A "Third Option"

A Discussion Paper on a New Way of Delivering Programs and Services

This discussion paper explores the concept of Delegated Administrative Organizations (DAOs), why the Alberta Government is considering DAOs as an alternative method of delivering services and programs to Albertans, and how the Delegated Administration Act is designed to make this possible.

Alberta

GOVERNMENT OF ALBERTA

Government Restructuring:

Reducing the Size and Cost of Government

The Government of Alberta, and all Albertans, are coming to terms with the need to reduce government expenditures and balance the provincial budget. A significant part of this process involves the restructuring and refocussing of government.

Despite having reduced the size of government in Alberta, some people believe we are still, "Canada's most governed province at the provincial and local government level." [*Globe and Mail*, October 31, 1994]

The feeling of many Albertans is that government is too big, too inefficient and doing more things than it should. We all need to continue asking a number of important questions:

- What current government services are not essential?
- If a government service is not essential, what should be done with it?
- What government services are essential?
- If a service is essential, what is the best way to deliver the service?

These questions, and their answers are part of developing an answer to the larger question: "What is the future role of government in Alberta?"

By asking questions and consulting with Albertans a number of innovative solutions and strategies have been, and will continue to be, developed. There is, however, much left to be done to address the need to refocus government's role and reduce the presence and cost of government.

There was an overwhelming consensus by all discussion groups that government needs to change. "Limit government's role," they said. "Less government, less regulation – and more fiscal responsibility."

from the moderator's report on the Premier's Conference on Alberta's Economic Future

Different Ways to Deliver Services and Reduce the Size of Government

There are, essentially, two options for delivering services to Albertans. Services can be delivered by government (the public sector) or by business (the private sector).

Government is looking at the services it delivers to determine if they are still needed, or if they can be delivered in a different, more efficient way. In some cases, the answer has been that a service does not need to be delivered by government.

Getting out of the service

Some government activities and programs came into existence because at one time there was a perceived need, and financial resources were available. In reviewing programs and services, government departments, in consultation with stakeholders and users, have been able to identify programs for which there is no longer a need, or where a need is being, or could be, met by others. In addition, other programs or services, although useful, are luxuries of an economy that just does not exist today.

Given our conviction that governments will need increased flexibility and resources to take on the new social and economic challenges of the future, our goal was to consider the potential role for creative public/private partnerships and to suggest specific ways in which the public sectors could work together to finance and deliver services that we now think of as "public." Our emphasis was on finding innovative options and beginning to articulate these options clearly.

from the Report of the Second Roundtable on the Future of the Alberta Economy

Privatization and Contracting Out

In some cases government has decided that delivery of a service or program can be done as well, if not better, by the private sector, and at reduced cost to taxpayers. To date, there have been a couple of ways in which services have been turned over to the private sector -- full privatization or contracting out.

Some activities and programs of government have been, and will be, privatized. These services have been identified as wanted, necessary or essential. They have also been identified as services that do not need to be delivered by government. When government privatises a service the service continues to be delivered, but by the private sector, not by the public sector, at taxpayers' expense. Some programs and services that have been privatized, include:

- the distribution and sale of alcohol
- motor vehicle registry

Some activities and programs of government have been, and will be, contracted out to individuals, companies and associations. Throughout government many necessary or essential services have been identified as being more effectively or efficiently delivered by contracted agencies, individuals or companies. In these cases government may still pay the cost of the service, but contracting delivery has proven to be more cost-effective. An example would be closing the government's central duplicating and printing service in favour of contracting print services to the private sector on a competitive basis.

The "Third Option"

More recently, government has identified another option for effectively restructuring the delivery of essential programs and services. A new program delivery model, based on partnerships and the empowerment of users, has been identified as the "Third Option" -- the first two options being government delivery of services and private sector (contracted or privatized) delivery of services.

The "Third Option" is almost a combination of the first two options. It is based on the creation of Delegated Administrative Organizations (DAOs). This option has been identified as an effective alternative. It allows government to retain a significant role in the ongoing provision of essential services, but the service itself would be provided and administered by an external, self-funded and not-for-profit organization operated by the users of the service.

The "Third Option" also provides for the creation of employment opportunities for current public service employees so they have an opportunity to work and provide their skilled services, outside the public sector.

The next section of this discussion paper focuses on the "Third Option" -- the concept of the Delegated Administrative Organization.

Participants also confirmed that stakeholders want to be involved in setting policies and making decisions. Local governments too want more responsibility in implementing programs. And individuals should be encouraged to make the vision happen. "We want Albertans to work toward creating communities in which they have opportunities for productive, safe, dynamic lives. We don't expect government to do everything for us."

from the moderator's report on the Premier's Conference on Alberta's Economic Future

Government's Changing Role

A new program delivery model, based on partnerships and the empowerment of users, has been identified as the "Third Option" – the first two options being government delivery of services and private sector (contracted or privatized) delivery of services.

Today, the Alberta Government holds responsibility for:

- public policy (legislation and regulation), and
- effective, appropriate administration of the programs and services related to legislation and regulations.

But government no longer has the resources to do business as it has before. Cutting resources and privatization are the two most common solutions. But other --*new*-- ways must be found to effectively deliver services.

The challenge is to maintain current programs, standards and levels of service while developing alternative methods of delivery.

The Alberta Government has found that the administration of programs and delivery of services *can* be delegated to others. Albertans also believe that industry's involvement often makes program delivery more effective.

> The Alberta Insurance Council is an example of a successful delegation of a service. The licensing program now operated by the Council used to involve more than 30 government staff. License renewals were sometimes delayed by up to six months. The same program under the Alberta Insurance Council is now delivered by about seven staff and licences are now renewed *prior* to their expiration date.

The "Third Option" is an alternative to cutting and privatization. The option can be achieved by establishing Delegated Administrative Organizations (DAOs) -- non-government organizations, prepared and qualified to assume some administrative functions currently handled by the Provincial Government.

Delegated Administrative Organizations?

A Delegated Administrative Organization (DAO) would *administer* selected government programs and services. Government would continue to make and monitor policy, legislation and standards.

Why a DAO?

- Programs and services delivered to a specific group of clients continue to be delivered at service levels they want and need.
- Public interest is safeguarded by government retaining responsibility for policy, regulations, and monitoring the delivery of programs and services.
- DAOs can be more responsive to changes, demands and market conditions.
- DAOs are financed by users -- reducing costs to government and the taxpayer.
- Affected parties are more directly involved.
- Government can respond quickly to expand or retract delegated responsibilities as necessary.

The DAO concept assumes that stakeholders will approach government requesting responsibility for administering a program. Not the other way around. No one can be forced into a DAO.

DAOs are an Alternative to Privatization

Existing legislation already lets government hand over some responsibility to the private sector. (We've had private schools in Alberta for years. Retail liquor sales are another example.)

Q. Is the proposed Delegated Administration Act a vehicle for allowing the widespread privatization of government services?

A. The intent of the Act is to provide a clear and consistent process for government to make use of the "Third Option" for restructuring. The "Third Option" is not a privatization option, it is a method of sharing responsibilities through partnerships between private, not-for-profit organizations and government. The Act is not about, and **cannot** be used for, the full privatization of any aspect of government, large or small, nor can it be used for the mass privatization of government services, large or small.

In addition, the Act does not cause anything to happen. It **does not** require or compel the delegation of any aspect of government. It is only, but importantly, designed to set out a consistent process for anyone interested in pursuing the option.

Q. What kinds of services and programs could be-

come a shared responsibility with a Delegated Administrative Organization?

The Government is determined that there be no duplication of services. As responsibility for administering a program is turned over to a DAO, the relevant program will cease to be delivered by government.

A. If there is a specific area of administration within a government department that could be delivered to the group of clients who use it, and in a way that would be more efficient and less costly to the taxpayer, then the Minister responsible can designate that administration to be done in a manner that still retains **full regulatory control** in the hands of government.

This is what distinguishes this option from the two traditional options - private sector delivery; public sector delivery - for the delivery of services. This option is not privatization, nor is it government continuing to do things in the same old ways.

A Delegated Administrative Organization only *administers* a program or service. Delegation to a private organization occurs only after public consultation, and only if a private group is willing to accept the responsibility.

Q. Is there a requirement to consult the public before programs or services can be delegated to the private sector?

A. Currently, departments can contract out or privatize services without public notification, other than through the contract bidding process. The Delegated Administration Act takes the unprecedented step of specifically compelling Ministers to conduct a public consultation process with all those affected by a proposed DAO. To ensure all interested or affected individuals are made aware of the intent to form a DAO, the Act ensures at least one public meeting. It does not restrict consultation to only one public meeting.

A. What is described throughout the Delegated Administration Act is a cooperative approach between stakeholders and the Government to develop alternative service delivery models for the benefit of users and all Albertans. There can be no delegation to an unwilling participant and there must be consensus among stakeholders prior to delegation.

How is a DAO set up?

There is no single model for a Delegated Administrative Organization, because the needs and expectations of the stakeholders will differ from one group to another, from one Department to another. The structure of a specific DAO will be determined by what is most appropriate under the circumstances.

For example, a DAO may be delegated the responsibility to administer an entire Code or Act. Or it may only administer a small portion of one section. A DAO may be established through one or more Ministers and have delegated authority from one or more Acts. Joint delegations could also include agreements with any or all levels of government.

Q. Will the Delegated Administration Act allow, for example, the creation of private, for profit, health care clinics?

A. No. This example would clearly be prohibited under the Canada Health Act. The Delegated Administration Act has been designed to restrict the use of funds raised by a DAO to offsetting the cost of providing the service. The intent is that a DAO should not be able to accumulate or distribute profits. The Minister has the responsibility in the Act to regulate the level of fees to ensure that monopolistic or usurious situations do not develop.

DAOs will Display Several Common Elements:

They will be a legal entity

Administrative responsibility must be delegated to a distinct legal entity, by:

- establishing a DAO (as a legal entity) and then delegating to it, or
- delegating the authority to an existing legal entity.

They will manage their own funds

DAOs will generate their own revenue and be liable for their own debts. Fees collected will be the DAO's responsibility. Fees cannot be set without approval of the Minister.

DAOs will not be profit-making organizations. They will not declare any dividends or distribute benefits to members. All DAOs will be subject to a full, annual audit.

Some organizations that already have administrative responsibilities delegated to them:

- *Petroleum Tank Management Association of Alberta*
- *Alberta Real Estate Association*
- *Alberta Funeral Services Association*
- *Alberta Insurance Council*

Q. How will government hold DAOs accountable for their financial affairs?

A. It must be remembered that DAOs are not part of government. The dollars they collect and spend come from the users of the service provided, not the general taxpayer. A DAO is required to be accountable to its users for its financial affairs, with the *additional requirement* to provide the Minister with an audited, annual financial statement in an annual report that must be tabled in the Legislature.

The whole idea of a DAO is, where appropriate, to stop spending taxpayer dollars on services that benefit a clearly defined user group and that don't need to be delivered by government. Even though a DAO's funds are not coming from taxpayers in general and are not, therefore, going into general revenue, there is still the added protection contained in the legislation to allow the Auditor General to perform audits to ensure full public disclosure and protection.

They will follow a delegation agreement

A "Delegation Agreement" will explain the roles and responsibilities of the Minister and the DAO. It will contain the specifics of what is to be delegated, to whom, how, and when. It will detail the administrative responsibilities, set out reporting requirements, and require an appeal mechanism.

The Delegation Agreement can be changed as needed, and the Minister can expand or retract what has been delegated.

DAOs will have Boards of Directors

DAOs will carry out their administrative responsibilities as private sector businesses, guided by a Board of Directors.

Stakeholders will select at least 60 per cent of the Board, and the Minister can appoint the remainder of the Board, to a *maximum* of 40 per cent.

Q. Will this proposal result in patronage appointments, and who will appoint members to the boards of administrative authorities?

A. The majority of any board of directors would be appointed by the users of the program or service, not by government. The Board of Directors would set any remuneration for its members.

Getting Started: Establishing DAOs

There are two partners involved in establishing a Delegated Administrative Organization: the stakeholders and the Government.

A typical process for establishing a DAO would consist of the following steps:

- an alliance of interested stakeholders explores the concept
- a group of stakeholders and the department investigate the issues and, with the Minister's approval, develop a draft DAO model
- the model is communicated to the affected parties (discussion paper, public meetings), creating an opportunity for everyone to be heard
- stakeholder feedback is incorporated into a final model
- a formal proposal is presented to the Minister
- the Minister seeks approval in principle from the Lieutenant Governor in Council
- the DAO is established as a legal entity
- a Delegation Agreement is developed between the Minister and the DAO
- a Delegation Agreement and Ministerial Order are prepared to transfer responsibility and authority to the DAO

DAOs working with Government

Although each DAO's relationship to Government will be different, there will be several common themes:

Policy

Through consultation with the public, stakeholders and the DAO, Gov-

Use of the "Third Option" is being pursued right now in the Department of Labour with regard to the registration of boilers and pressure vessels in Alberta. Here is a situation where the stakeholders involved with boiler and pressure vessel use and registration have suggested it would be more efficient to have the authority for this registration delegated to a group made up of all the stakeholders. The users want the program to continue. They think they can deliver the service more effectively and efficiently, and at lower cost. They also think government should continue to regulate the area and monitor their work. The result will be a better program, with more user involvement. It will also mean that the only people paying for the service would be those involved in its use, and not the taxpayers of Alberta.

ernment will continue to set the policy direction. The DAO will only administer the portion delegated to it.

Q. Will this Delegated Administration Act allow the Government to govern through regulation, rather than seeking the approval of the Legislative Assembly?

A. No. Delegated Administrative Organizations (DAO) would carry out administrative functions related to existing or new Acts or regulations. The role of a DAO is to provide effective and efficient administration and management of a program or service. A DAO has no legislation making powers under this Act. The Act is not about legislation development, it is about establishing alternative service delivery mechanisms that are in the best interests of program users and all Albertans.

Q. Will the Act allow industries to set their own rules and standards?

A. No. This is clearly not the intention of the Act, and it is clearly prohibited in the proposed legislation. All standards, such as pollution standards, are contained in Acts and regulations. A Delegated Administrative Organization (DAO) is expressly forbidden from making or amending Acts or regulations. The making of legislation remains entirely the responsibility of government.

Roles, Responsibilities and Powers of the DAO

The Minister will determine the specific functions that are delegated, ensuring that the legislation and Delegation Agreement:

- reflect Government policy, priorities and objectives,
- take into account the needs of all stakeholders, (including consumers),
- establish administrative procedures that are fair, objective, and easy to understand, and
- ensure due process through mechanisms such as an appeal procedure.

Q. Does the Bill include appeal mechanisms for persons affected by the activities of a DAO?

A. Yes. The appeal provision in the Act is a reflection of current process. The Act specifically states that where an appeal process is in existence it remains in existence. Where no appeal mechanism is in place, the Act provides for an appeal to the Minister. The Minister may hear the appeal or refuse to hear it. This is consistent with current practise and, if the Minister refuses to hear the appeal, the individual has the right to pursue the matter in the courts.

Performance Audit

Part of government's role is to ensure that the DAO is operating appropriately. This involves monitoring a DAO's performance and conducting formal audits.

Under the "Third Option" approach, government will continue to protect the public interest by retaining responsibility for policy development, legislation and regulations, and by auditing the way programs are delivered.

The DAO must deliver a detailed annual report that includes:

- approved financial statements and auditor's report,
- a list of the appointed members and directors,
- bylaws and amendments adopted, and
- a report on activities undertaken, results achieved and progress towards achieving agreed performance measures.

Q. Will a DAO be held accountable for its actions?

A. Again, a DAO is not a government agency. Therefore a DAO will have to carry **full liability provisions**. This must be done so they are accountable for their actions. Along with this, the Government clearly is the one mandating exactly what DAOs can and cannot do, and clearly outlining the spheres of responsibility. It is helpful to be aware that in our present situation, even without this particular Act, the Government is not, for example, responsible, for what happens in a particular school or hospital. Those entities are responsible to their users for all and any liability. It would be the same with a DAO. Even with these provisions, government can always be charged as co-liable in virtually any civil action.

The Minister will table the annual report in the Legislature, and the DAO must file the reports with the Registrar of Corporations. All reports will be open to analysis and debate in the Legislature.

Government's involvement with each individual DAO will be defined in:

- an Order in Council, (if appropriate)
- a Delegation Agreement, and
- the individual DAO's bylaws.

Delegation of government responsibility is an important public policy decision which should have the support of the Legislature.

There are three legislative options which could allow for implementation of a DAO:

- an Order in Council (O.C.) arising out of an appropriate Act
- a Ministerial Order authorized by the O.C.
- existing legislation

The Delegated Administration Act: Providing for a Consistent Approach

The Delegated Administration Act, Bill 57, was tabled in the Legislative Assembly of Alberta on October 27, 1994.

The legislation is intended to provide a consistent framework for developing what has been described on previous pages as the "Third Option" -- the development of Delegated Administrative Organizations as an alternative form of service delivery.

The Government decided not to proceed with Bill 57 in the Fall Session of the Legislature. This was done to provide Albertans with clear information about the Bill, and to allow Albertans to make suggestions on how to improve the Bill, so it might better meet their needs and address their concerns.

At the initial discussion stages of this Bill (and before there was opportunity for meaningful debate in the Legislature) a number of inaccuracies about parts of this Bill began to raise some concern regarding the intentions of the Bill and what could be accomplished by it.

The discussion paper you have just read describes the context for the Delegated Administration Act, what the Act is designed to accomplish -- and what it is designed to prevent.

A copy of Bill 57, the Delegated Administration Act, as it was presented in the Fall Session of the Legislature is attached. Any comments you have about the Bill or any part of this discussion paper are welcome.

The Bill is now in the process of being amended. In order for your comments to be addressed, you can send them to your MLA, or to me:

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I would appreciate hearing from you by February 10, 1995.